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Automobiles and Highway Traffic

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I. In General

C. Regulation, in General

2. Who May Regulate Motor Vehicles

§ 22. Municipal or local regulation—Conflict with state statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 5(1), 9

A county or municipality may regulate in an area such as traffic whenever its regulation is not in conflict with the general laws of the state.¹ However, such regulations are invalid if they are in conflict with statutes relating to the subject.²

Where the state has retained the power to provide general laws regulating traffic on the highways of the state, legislation enacted pursuant to such right cannot be curtailed, infringed upon, or annulled by local authorities,³ and where there is conflict between such a state statute and a municipal ordinance, the statute prevails.⁴ This rule applies even in a jurisdiction where the municipality is granted the authority under the constitution to make and enforce laws respecting municipal affairs, subject only to the provisions of its charter, the regulation of traffic not being deemed a “municipal affair” within the meaning of the constitutional grant of authority.⁵ On the other hand, if the state statute, fairly construed, does not purport to be exclusive of the power of a municipality to make and enforce traffic regulations for the municipality, the fact that the municipal regulations are more stringent than the traffic regulations provided by statute does not invalidate them.⁶

Whether or not a local government may enact an ordinance at variance with a state statute depends on whether the state intended to preempt the field.⁷ Generally, an ordinance should stand unless there is an actual conflict between the ordinance and the statute or unless the legislature has clearly preempted the field so as to preclude any municipal actions.⁸ A conflict exists when the local regulation is facially inconsistent with the state law,⁹ such as when the ordinance prohibits an act permitted by statute or permits an act prohibited by statute.¹⁰

A state statute takes precedence over a local ordinance, such that the ordinance will be determined to exceed the municipality's powers under the Home Rule Amendment to a state constitution, when: (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.¹¹ For example, a city ordinance that created an automated speed-limit enforcement system imposing civil liability on violators did not conflict with a state general law speed-limit statute but merely supplemented it, and thus did not exceed the city's home rule powers under the state constitution; the ordinance did not change speed limits established by state law or change the ability of police officers to cite offenders for traffic violations.¹²

A state statutory scheme regulating parking does not hinder municipalities' rights to simultaneously regulate parking.¹³ However, because traffic ordinances are an exercise of the police power, they may be invalidated if they conflict with the general laws of the state.¹⁴

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Footnotes